

MICHAEL FEUER, City Attorney
KATHLEEN A. KENEALY, Chief Assistant City Attorney (SBN 212289)
SCOTT MARCUS, Senior Assistant City Attorney (SBN 184980)
GABRIEL DERMER, Assistant City Attorney (SBN 229424)
FELIX LEBRON, Deputy City Attorney (SBN 232984)
A. PATRICIA URSEA, Deputy City Atty (SBN 221637)
200 N. Main Street, City Hall East, Room 675
Los Angeles, CA 90012
Telephone (213) 978-7569
Facsimile (213) 978-7011
Felix.Lebon@lacity.org
Patricia.Ursea@lacity.org
Attorneys for Defendant, CITY OF LOS ANGELES

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JANET GARCIA, GLADYS ZEPEDA,
MIRIAM ZAMORA, ALI EL-BEY, PETER
DIOCSON JR., MARQUIS ASHLEY, JAMES
HAUGABROOK, individuals, KTOWN FOR
ALL, an unincorporated association,
ASSOCIATION FOR RESPONSIBLE and
EQUITABLE PUBLIC SPENDING an
unincorporated association,

Plaintiffs,

vs.

CITY OF LOS ANGELES, a municipal entity;
DOES 1-50,

Defendant(s).

Case No.: 2:19-cv-6182-DSF-PLA
Assigned to Judge Dale S. Fischer

**REQUEST FOR JUDICIAL
NOTICE**

Concurrently Filed Documents:

- Memorandum of Points & Authorities ISO Opposition
- Declarations ISO Opposition: Dermer, Wong, Pereida, Ramirez, Rankin, Guerrero, Haines, Medina, Banks, Bernal, Rodriguez, Diaz
- Request for Judicial Notice
- Evidentiary Objections

Date: March 30, 2020

Time: 1:30 p.m.

Ctrm: 7D

Pursuant to FEDERAL RULE OF EVIDENCE 201(b)(2), Defendant City of Los Angeles (“City”), hereby seeks judicial notice of the following:

1. Los Angeles Municipal Code (“LAMC”) section 64.70.05 (Authority to Inspect). A true and correct copy of said section is attached hereto as Exhibit “1.”

2. LAMC section 64.70.07 (Enforcement). A true and correct copy of said section is attached hereto as Exhibit “2.”

3. LAMC section 64.70.08 (Remedies Not Exclusive). A true and correct copy of said section is attached hereto as Exhibit “3.”

4. LAMC section 64.70.09 (Liability for Costs of Correction Arising from Unlawful Discharge). A true and correct copy of said section is attached hereto as Exhibit “4.”

5. LAMC section 66.25 (Depositing Solid Waste on Streets or in the Los Angeles River Prohibited). A true and correct copy of said section is attached hereto as Exhibit “5.”

6. LAMC section 190.02 (Depositing Solid Waste). A true and correct copy of said section is attached hereto as Exhibit “6.”

Exhibits 1-6 are subject to judicial notice under FEDERAL RULE OF EVIDENCE 201(b) as municipal ordinances are proper subjects for judicial notice. *See Tollis Inc. v. Cty. of San Diego*, 505 F.3d 935, 938 n.1 (9th Cir. 2007).

Dated: March 9, 2020

MICHAEL N. FEUER, City Attorney
KATHLEEN KENEALY, Chief Assistant City Attorney
A. PATRICIA URSEA, Deputy City Attorney
By: /s/ A. Patricia Ursea
A. PATRICIA URSEA

Deputy City Attorney
Attorneys for Defendant City of Los Angeles

EXHIBIT 1

Official City of Los Angeles Municipal Code (TM)

SEC. 64.70.05. AUTHORITY TO INSPECT.

(Added by Ord. No. 172,176, Eff. 10/1/98.)

A. Authority to Inspect. Whenever it is necessary to investigate the source of any discharge to any public street, inlet, gutter, or storm drainage system within the City of Los Angeles, to verify compliance with this article, or to enforce any of its provisions, or perform any duty imposed by this article or other applicable law, the Director is hereby authorized to enter such private property at any reasonable time and perform such inspection or investigation. Prior to performing any authorized inspections, entry to private property shall be obtained as follows:

1. If such building or premises is occupied, the Director shall first present proper credentials of identification and obtain either the consent of the owner or occupant of the private property or shall obtain an administrative warrant or criminal search warrant; or

2. If such building or premises is unoccupied, the Director shall first make a reasonable effort to locate the owner or other persons having charge or control of the building or premises and request entry, explaining the reasons therefor. If such entry is refused or cannot be obtained because the owner or other person having charge or control of the building or premises cannot be found, the Director shall have recourse to every remedy provided by law to secure entry and inspect the building or premises.

3. Notwithstanding the foregoing, if the Director has reasonable belief that the discharges emanating from the premises are so hazardous, unsafe or dangerous as to require immediate inspection or remedial actions to abate conditions that endanger the public health or safety, the Director shall have the right to immediately enter the premises. Any reasonable means may be used to effect such entry to make the necessary inspection or abate the dangerous condition, whether the property is occupied or unoccupied and whether or not formal permission to inspect has been obtained. If the property is occupied, the Director shall first present proper credentials of identification to the occupant and demand entry, explaining the reasons therefor and the purpose of the inspection.

(a) In accordance with this subdivision, no person shall refuse, resist, restrict, delay, or interfere with the Director in the performance of his/her duties.

B. Inspection Duties. Upon securing entry onto private property, the Director shall be allowed to perform the following duties during an inspection:

Official City of Los Angeles Municipal Code (TM)

1. To inspect, take samples of any area runoff, process discharge or materials within any exposed waste storage area and perform tests for the purpose of determining the potential for the contribution of pollutants to the storm drain system;
2. To place on the property of the inspected facility or site any such devices as are necessary to sample, monitor, measure and record flows of discharge or threatened discharge;
3. To inspect, examine and copy all records of the owner or occupant of inspected property that pertains to any discharge to the storm drain system, including records relating to chemicals or processes presently or previously occurring on the site, NPDES permit, Notice of Intent to comply with a General NPDES permit, waste discharge records, waste manifests, Storm Water Pollution Prevention Plans, monitoring plans, test results, any records or plans relating to discharge connections to the storm drain system and any other information required to carry out the provisions of this article;
4. To inspect and enforce the sufficient implementation of applicable Best Management Practices by the business establishment, property owner and/or developer; **(Added by Ord. No. 175,026, Eff. 2/2/03.)**
5. To photograph any materials, storage or process areas, wastes, waste containers, vehicles, connections, Best Management Practices, treatment systems, discharge location(s), or any violation(s) discovered during the inspection; and **(Former Subdivision B.4. re-designated Subdivision B.5. by Ord. No. 175,026, Eff. 2/2/03.)**
6. To abate, correct or prevent pollutants from entering the storm drain system or surface waters. **(Former Subdivision B.5. re-designated Subdivision B.6. by Ord. No. 175,026, Eff. 2/2/03.)**

EXHIBIT 2

Official City of Los Angeles Municipal Code (TM)

SEC. 64.70.07. ENFORCEMENT.

(Added by Ord. No. 172,176, Eff. 10/1/98.)

A. Criminal Sanctions.

1. **Misdemeanors.** Every violation of this article is punishable as a misdemeanor unless such violation or failure to comply is declared therein to be an infraction. Misdemeanors shall be punishable as follows:

(a) A misdemeanor shall be punishable by a fine of not more than \$1,000.00 or by imprisonment in the County Jail for a period of not more than six (6) months, or by both such fine and imprisonment.

2. **Infractions.** Violation of any provision of this article that is provided herein to be an infraction shall be punishable as follows:

(a) Every violation that is charged as an infraction is punishable by a fine not to exceed \$50.00 for the first violation, \$100.00 for the second violation of the same provision within one year of the first violation, and \$250.00 for the third violation of the same provision within one year of the second violation. Any subsequent violation(s) of the same provision, occurring any time after the third violation of the same provision, shall be punishable as a misdemeanor.

B. Violations Deemed A Public Nuisance. In addition to the penalties provided in this section, any condition caused or permitted to exist in violation of any provision of this article shall be deemed a public nuisance, and may be summarily abated by the City.

C. Continuing Violation(s). Unless otherwise provided, a person shall be deemed guilty of a separate offense for each and every day a violation of this article is committed, continued or permitted by the person and shall be punishable accordingly as herein provided.

EXHIBIT 3

Official City of Los Angeles Municipal Code (TM)

SEC. 64.70.08. REMEDIES NOT EXCLUSIVE.

(Added by Ord. No. 172,176, Eff. 10/1/98.)

Remedies provided for the enforcement of this article are in addition to and do not supersede or limit any and all other remedies provided by law. The remedies provided herein are cumulative and not exclusive.

EXHIBIT 4

Official City of Los Angeles Municipal Code (TM)

**SEC. 64.70.09. LIABILITY FOR COSTS OF CORRECTION ARISING FROM
UNLAWFUL DISCHARGE.
(Amended by Ord. No. 175,596, Eff. 12/7/03.)**

In addition to any fine or penalty imposed, whenever any discharger introduces or causes the introduction of non-storm water or any pollutant in violation of this article and the discharge results in a violation of any State or Federal laws or regulations, damages public property, or adversely affects a storm drain system in the City of Los Angeles or receiving waters, the discharge shall be deemed a public nuisance and the discharger shall be liable to the City for reasonable costs necessary to correct that discharge, detriment or adverse effect, including, but not limited to labor, material, inspection, transportation, overhead, and incidental expenses associated with the corrective action or the clean-up of the pollutant and its effects.

All costs incurred pursuant to this section shall be a personal obligation against the discharger and any owner of any property that is the source of any discharge, recoverable by the City in an action before any court of competent jurisdiction. These costs shall include an amount equal to 40 percent of the cost to perform the actual work, but not less than the sum of \$100.00, to cover the City's costs for administering any contract and supervising the work required. In addition to this personal obligation and all other remedies provided by law, the City may collect any judgment, fee, cost, or charge, including any permit fees, fines, late charges, or interest, incurred in relation to the provisions of this section as provided in Los Angeles Administrative Code Sections 7.35.1 through 7.35.8.

EXHIBIT 5

Official City of Los Angeles Municipal Code (TM)

SEC. 66.25. DEPOSITING SOLID WASTE ON STREETS OR IN THE LOS ANGELES RIVER PROHIBITED.

(Title and Section Amended by Ord. No. 182,986, Eff. 5/28/14.)

(a) No person shall deposit or cause to be deposited any solid waste of any kind whatsoever upon or in any street, or upon any premises in this City, or in the Los Angeles River.

(b) Any person whose identifying information is found in or who is otherwise responsible for the deposit of solid waste of any kind whatsoever, upon or in any street, shall be responsible for depositing it on the public right-of-way and shall be subject to administrative penalties as defined in Subsection (c).

(c) The first violation of Subsection (b) in a calendar year is subject to warning or an administrative monetary penalty not to exceed \$500.00. Subsequent violations in the same calendar year will result in a second penalty not to exceed \$750.00 for the second violation after receiving the initial \$500.00 penalty. The penalty for the third administrative violation in a calendar year is \$1000.00. More than three administrative fines in one calendar year shall result in the violation being charged as a misdemeanor in Superior Court and subject to all penalties applicable to criminal violations. The Bureau is authorized to assess a processing fee established by the Board for all citations with an administrative monetary penalty. All noncriminal enforcement actions are subject to the administrative hearing process as mandated in the California Government Code Section 53069.4, as now existing and as may be amended.

EXHIBIT 6

Official City of Los Angeles Municipal Code (TM)

SEC. 190.02. DEPOSITING SOLID WASTE.

It shall be unlawful for any person to deposit or cause to be deposited any putrescible and non-putrescible solid wastes including combustible or noncombustible rubbish, refuse, trash, dewatered, treated or chemically fixed sewage sludge, or discarded solid or semisolid wastes or regulated recyclable materials of any kind whatsoever upon or in any street, public area, any private premises in this City, or in the Los Angeles River, or in the bed thereof without obtaining all required approvals and/or permits to do so.